TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~430.~~ 215

THE UNITED STATES, APPELLANTS,

vs.

WILLIAM A. NEWMAN.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 19, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 430.

THE UNITED STATES, APPELLANTS,

vs.

WILLIAM A. NEWMAN.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Petition	1	1
Pleas	8	3
Final judgment of the court	9	3
Application for an appeal	10	3
Order of Chief Justice allowing same	10	4
Certificate of presiding judge	11	4
Findings of fact	12	4
Certificate	14	5

1 *Petition.*

In the United States Court of Claims.

WILLIAM A. NEWMAN
vs. } 5011.
THE UNITED STATES.

To the honorable the Court of Claims of the United States:

The petition of William A. Newman, of the city of Washington, in the District of Columbia, respectfully represents: That, on the thirtieth day of June, A. D. 1866, and for a long time previous thereto, he was employed by the Government of the United States as one of the persons generally known as the "Police of the Capitol," but who are by the law authorizing their appointment designated as "the assistants of the Commissioner of Public Buildings," (see Statutes at Large, vol. 4, page 266,) in the said city of Washington, at the agreed sum and price of two thousand and eighty-eight dollars per year, and that he con-

2 tinued in the employ of the said Government of the United States until the thirty-first day of March, 1867, (nine months,) and receiving from the said Government of the United States the sum of fifteen hundred and ninety-six dollars as a compensation for said services, which was regularly paid to him out of the contingent fund of the two Houses of Congress, one moiety from each, in conformity with said law, on the certificate of the said Commissioner, and that he thereby became and was an employee in the office of the Commissioner of Public Buildings, in the city of Washington aforesaid.

Your petitioner further represents that the Congress of the United States did, at the second session of the Thirty-ninth Congress, pass a joint resolution giving additional compensation to certain employees in the civil service of the United States, which joint resolution was approved and signed by the President of the United States on the 28th day of February, 1867, and is in the words and figures following, to wit:

3 "That there shall be allowed and paid out of any money in the Treasury, not otherwise appropriated, to the following-described persons now employed in the civil service of the United States, at Washington, as follows: To civil officers and temporary and all other clerks, messengers, and watchmen, including enlisted men detailed as such, to be computed upon the gross amount of the compensation received by them, and employees, male and female, in the Executive Mansion, and in any of the following-named Departments, or any Bureau or division thereof, to wit: State, Treasury, War, Navy, Interior, Post Office, Attorney General's, Agricultural, and including civil officers and temporary, and all other clerks and employees, male and female, in the office of the Coast Survey, Naval Observatory, Navy Yard, Arsenal, Paymaster General, including the division of referred claims, Commissary General of Prisoners, Bureau of Refugees, Freedmen, and

4 Abandoned Lands, Quartermaster's, Capitol and Treasury Extension, City Post Office, and Commissioner of Public Buildings; to the photographer of the Treasury Department, to the superintendent of meters, and to lamp-lighters under the Commissioner of Public Buildings, an additional compensation of twenty per centum on their respective salaries as fixed by law, or, where no salary is fixed by law, upon their pay, respectively, for one year from and after the 30th day of June, 1866; but when any of said persons is or shall be only entitled

to receive salary or pay for a part of said year, the said twenty per centum shall be computed on the amount such person is so entitled to receive for services in any or all of said Departments or offices within said year: *Provided*, That the above-named additional compensation to the employees of the Patent Office shall be paid out of the funds of said office: *Provided further*, That this resolution shall not apply to persons whose salaries, as fixed by law, exceed three thousand five hundred dollars per annum."

And your petitioner further respectfully represents that, during the year commencing on the thirtieth day of June, A. D. 1866, and ending on the thirtieth day of June, A. D. 1867, the gross amount of compensation allowed and paid him by the Government was fifteen hundred and ninety-six dollars; that, by the terms of the foregoing joint resolution of Congress the United States agreed to pay your petitioner the additional sum of twenty per centum on the aforesaid sum received by him as aforesaid, from the thirtieth day of June, 1866, to the thirtieth day of June, 1867.

Your petitioner further respectfully represents that, believing himself entitled to said additional compensation, under said resolution, he made application to the proper officer of the Treasury Department having the power to decide upon his application, to wit, the First Comptroller thereof, for payment of the same, but without success, that officer deciding that your petitioner did not come within the resolution above referred to.

And your petitioner further respectfully represents that he has at all times borne true and faithful allegiance to the Government of the United States, and that he has not, in any way or manner, voluntarily aided, abetted, or given encouragement to rebellion against it.

Your petitioner therefore prays judgment against the United States for the sum of three hundred and nineteen dollars and twenty cents, the amount of twenty per centum on said fifteen hundred and ninety-six dollars, compensation received by him as aforesaid.

J. DANIELS,
Attorney for Claimant, Washington, D. C.

DISTRICT OF COLUMBIA,
County of Washington, ss:

J. Daniels, being duly sworn, deposes and says that he is the attorney for the above-named claimant; that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made, except as in said petition stated; that said claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that deponent verily believes the facts as stated in said petition are true.

J. DANIELS.

Sworn and subscribed to before me this 26th day of Jan'y, 1869.
[L. S.] THO'S J. MYERS,
Notary Public.

(Indorsed:) 5011. William A. Newman vs. The United States.

8 In the Court of Claims of the United States.

WM A. NEWMAN
vs.
THE UNITED STATES. } No. 5011.

Special plea for defendants.

And the said defendants, by their Attorney General, now come, and, by leave of court, (as expressed in Rule IX,) say that the said claimant ought not further to maintain said action, because—

1. While the claim presented in this petition is such as is ordinarily settled in an Executive Department, the petition does not set forth the decision thereon of the proper Department of the Government, to which application was (as is alleged) made for the payment of the claim. (Rule II.)

2. The petition does not set forth a full statement of the action, on the claim therein presented, by a Department of the Government, as required by section 1 of the act of February 4, 1855.

3. The evidence in the case does not show that any such application has ever been made to any Department of the Government, whether with or without success, or any action whatever thereon, without which action this court has no lawful jurisdiction in this case.

And the said defendants pray judgment, &c.

THOMAS H. TALBOT,
Assistant Attorney General.

9 In the Court of Claims.

WILLIAM A. NEWMAN
vs.
THE UNITED STATES. } 5011.

And now, to wit, 23d of May, A. D. 1870, the court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said William A. Newman have and recover of and from the United States the sum of three hundred and twelve dollars seventy-five cents, ($312 75.)

By the court:

A true copy of record.

10 In the Court of Claims, Dec. term, 1869.

WILLIAM A. NEWMAN
vs.
THE UNITED STATES. } 5011.

The defendants, come and ask, by their Att'y General, the allowance of an appeal to the Supreme Court of the United States in this cause, on the ground that the judgment will affect a class of cases.

THOMAS H. TALBOT,
Ass't Att'y Gen'l.

Filed in the clerk's office, Aug. 17, 1870.

AT CHAMBERS.

Ordered, That the appeal as prayed in this cause be allowed.
Sept. 26, 1870.

JOSEPH CASEY,
Ch. Justice.

11 In the Court of Claims of the U. S., December term, 1869.

I, Edward G. Loring, judge, presiding, of the Court of Claims, do hereby certify that the judgment rendered in the case of William A. Newman vs. The United States, on the 23d day of May, 1870, affects a class of cases and furnishes a precedent for the future action of an Executive Department in the adjustment of such class of cases.

EDW. G. LORING,
Presiding Judge.

(Indorsed:) 5011. W'm A. Newman vs. the U. S. Certificate of Judge Loring. Filed Nov. 30, 1870.

12 In the United States Court of Claims.

WILLIAM A. NEWMAN
vs.
THE UNITED STATES. } No. 5011.

The findings of facts and the conclusions of law on said facts on which the court founded its opinion.

This cause coming on to be heard the 23 day of May, 1870, before all of the judges of the Court of Claims, the said court finds as matters of fact—

That the claimant was an employé in office of the Commissioner of Public Buildings, as captain of the Capitol police, and was in office from the 30th day of June, 1866, until the 1st day of April, 1867, and was paid a salary at the rate of $2,085 per year, until the 1st April, 1867, when he was discharged.

That application was made to the First Comptroller of the Treasury to be allowed the additional compensation of 20 per centum on his salary under the joint resolution of Congress approved Feb'y 28th, 1867, and that such compensation was refused.

That he was loyal to the Government of the United States, and took the oath of allegiance commonly called the test oath.

13 On July 28th, 1866, there was allowed to William A. Newman, as Capitol police, an addition of 20 °|₀ on his pay at that time. (14 St. Large, 327 & 323.]

The claimant was not employed within the [four walls of the] office of the Commissioner of Public Buildings.

By the court.

The defendants also requested the court to make the following findings, which request was refused:

William A. Newman was one of the Capitol police on June 30th, 1866, and continued as such until April 1st, 1867, when he was discharged. (See test. of Westfall.)

On March 2ond, 1867, the office of Commissioner of Public Buildings was abolished, and the duty of appointment of the members of the Capitol police imposed on the Sergeant-at-arms of the Senate and House of Representatives. (14 St. Large, 466.)

The claimant never made application for the settlement and payment of his claim, either before or during this litigation, to any Department of the Government in which such claims are ordinarily settled.

14 In the Court of Claims.

WILLIAM A. NEWMAN
vs
THE UNITED STATES. } No. 5011.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the counsel for defendants for the allowance of an appeal, as filed in the clerk's office, Aug. 17, 1870, and of the order of the Chief Justice of said court, allowing the same; of the certificate of the presiding judge, and of the finding of facts upon which the court founded its judgment; and of the proposed findings by defendants, which request was refused by the court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 17th day of December, 1870.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 430. The United States, appellants, vs. William A. Newman. Court of Claims. Filed 19th December, 1870.

REC. 430—2

Supreme Court of the United States.

THE UNITED STATES, Appellant,
vs.
WILLIAM A. NEWMAN, Appellee. } No.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF OF THE APPELLEE.

The appellee, William A. Newman, one of the Capitol police, brought his action in the Court of Claims to recover the sum of three hundred and twelve dollars and seventy-five cents, additional compensation, under the joint resolution of Congress, approved February 28, 1867, which is in the following words:

"That there shall be allowed and paid out of any money in the Treasury not otherwise appropriated, to the following described persons, now employed in the civil service of the United States, at Washington, as follows: To civil officers and temporary and all other clerks, messengers, and watchmen, including enlisted men detailed as such, to be computed upon the gross amount of the compensation received by them; and employees, male and female, in the Executive Mansion and in any of the following named departments, or any bureau or division thereof, to wit: State, Treasury, War, Navy, Interior, Post Office, Attorney General's, Agricultural, and including civil officers and temporary and all other clerks and employees, male and female, in the office of the Coast Survey, Naval Observatory, Navy

Yard, Arsenal, Paymaster General, including the division of referred claims, Commissary General of Prisoners, Bureau of Refugees, Freedmen, and Abandoned Lands, Quartermaster's, Capitol and Treasury extension, City Post Office, and Commissioner of Public Buildings; to the photographer of the Treasury Department, to the superintendent of meters, and to lamp-lighters under the Commissioner of Public Buildings—an additional compensation of twenty per centum on their respective salaries, as fixed by law, or, where no salary is fixed by law, upon their pay, respectively, for one year from and after the 30th day of June, 1866; but when any of said persons is or shall be only entitled to receive salary or pay for a part of said year, the said twenty per centum shall be computed on the amount such person is so entitled to receive for services in any or all of said departments or officers within said year: *Provided*, That the above-named additional compensation to the employees of the Patent Office shall be paid out of the funds of said office: *Provided further*, That this resolution shall not apply to persons whose salaries, as fixed by law, exceed three thousand five hundred dollars per annum."

No error is alleged in the finding of the court, but the appeal was asked simply upon the ground that the judgment would affect a class of cases.

The question, therefore, before this court is one of construction of this resolution, and the further question, is the claimant entitled to recover upon the law and the facts as found by the court.

It will be seen that there are several classes of Government servants provided for by this resolution, and that its benefits are extended to all, both male and female, who at the date of the resolution were employed in any of the following named departments or any bureau or division thereof, to wit: State, Treasury, War, Navy, Interior, Post Office, Attorney General's, Agricultural, and including civil officers, temporary and all other clerks and employees, male and female, in the office of the Coast Survey,

Navy Yard, Naval Observatory, Arsenal, Paymaster General, &c., &c., including the Commissioner of Public Buildings.

The said Newman, being one of the Capitol police, and by the terms of the law under which he was appointed an assistant of the Commissioner, was an employee in the office of the Commissioner of Public Buildings.

The police force of the Capitol was at the date of this resolution composed of one captain, one lieutenant, and twenty-nine men, the pay of each man, save the captain and lieutenant, being $1,584 per year.

The law authorizing the appointment of the Capitol police, under the name of "necessary assistants" to the Commissioner, is the 4th sec. of the act of May 22, 1828. (See 4th vol., Stat. at Large, p. 266.) After which Congress increased the same by a permanent addition of twenty per cent. on that sum. (See Stats. at Large, vol. 10, p. 270.)

The first regulation in force from March 28, 1862, to the time at which the office of Commissioner of Public Buildings was abolished, (which was the 4th of March, 1867,) contained the following provisions, viz: "All these persons (the police) to be appointed by the Commissioner of Public Buildings, and to be under his control."

Appropriations have been regularly made by Congress in the contingent funds of the two houses for years past. (See vol. 14 Stats. at Large, p. 441.)

The appellee was an employee in the office of the Commissioner of Public Buildings, and is therefore within the provisions of the joint resolution of February 28, 1867, and is entitled to its benefits. (See James Stone *v.* United States, 3 Nott & Huntington Rep., p. 266; Hannibal *v.* Graham, 1 N. & H. Rep., p. 380; The United States *v.* Bellew, 2 Brockenborough, 280; Mallory's case, 3 N. & H., p. 257.

OFFICE.

The word "office" must be construed to mean what is generally understood by the term in its legal sense, and

refers to the functions to be performed, and not to the place where they are performed. (See N. & H., vol. 3, p. 262; Cruise's Digest, title 25, "office;" Shepherd on the law of Mortmain, p. 797; 3 Serg. & Rawle, p. 149; Act of Congress, March 2, 1867, abolishing the office of Commissioner of Public Buildings.)

The following cases being of the same class, if it please the court, may be considered at the same time:

The United States, Appellant,
vs.
Thomas A. Fitzpatrick, Appellee. } No. 208.

This claimant was a keeper of the western gate, Capitol grounds, and an employee in the office of the Commissioner of Public Buildings. (See findings of the court; see also act of Congress approved July 23, 1866; see also authorities above cited.)

The United States, Appellant,
vs.
George W. Hall, Appellee. } No. 209.

This claimant was a superintendent of crypt in the Capitol; was employed by the Commissioner of Public Buildings; was an employee in his office, and therefore entitled to the benefits of said resolution. (See authorities above cited.)

The United States, Appellant,
vs.
John Bohn, Appellee, } No. 210.

This claimant was a laborer on the public grounds; was employed by the Commissioner of Public Buildings, and was an employee in his office, and therefore entitled to the benefits of said resolution. (See same authorities as above cited.)

The United States, Appellant,
vs.
Charles F. Holbrook, Appellee. } No. 211.

This claimant was a watchman at the Government stables, employed by the Commissioner of Public Buildings, and therefore entitled to the benefits of said resolution. (See same authorities.)

The United States, Appellant,
vs.
Thomas E Lyttle, Appellee. } No. 211.

This claimant was a watchman on east Capitol grounds, employed by the Commissioner of Public Buildings, and therefore entitled to the benefits of said resolution. (See same authorities.)

The United States, Appellant,
vs.
Lorenzo D. Le Rien, Appellee.

This claimant was a watchman on the Smithsonian grounds, employed by the Commissioners of Public Buildings, and therefore entitled to the benefits of said resolution. (See same authorities as above cited; also Ashfield *v.* The United States, 3 Nott & Huntington Rep., 263.

The United States, Appellant,
vs.
John G. Richards, Appellee. } No. —.

This claimant was a watchman on the dome of the Capitol, employed by the Commissioner of Public Buildings, and therefore entitled to the benefits of said resolution. (See same authorities above cited; see also the following extracts from resolutions and acts of Congress.)

Resolution No. 58, approved July 25, 1866:

"*Resolved by the Senate and House of Representatives of the* 'United States of America in Congress assembled, That the 'Commissioner of Public Buildings and Grounds be, and 'the same is hereby, authorized to employ three additional 'watchmen for the Smithsonian grounds."

For compensation of the watchman on the dome, see act of Congress, approved March 2, 1867:

"For compensation of three watchmen on the dome, two 'thousand seven hundred dollars."

For appropriation for fourteen laborers employed in public grounds, see act of Congress approved July 23, 1866, as follows:

"For compensation of a foreman and twenty-one labor-'ers, employed in the public grounds, thirteen thousand 'four hundred dollars.

"For compensation of one night watchman at the public 'stables and carpenter shops, south of the Capitol, one 'thousand dollars.

"For compensation of keeper of the western gate Capi-'tol grounds, eight hundred and seventy-six dollars."

For authority for the Commissioner of Public Buildings to employ additional watchman on Smithsonian grounds, see authorities cited in Ashfield's case, (3 N. & H., page 264.)

The United States, Appellant,
vs.
Charles H. Manning, Appellee. } No.

This claimant was one of the guards at the jail, and was therefore an employee in the Interior Department. (See Brightly's Digest, pages 120, 121, secs. 33 to 42 inclusive.) The guards of the jail are either civil officers or employees in the Interior Department, and are therefore entitled to the benefits of the resolution.

We think the term watchman might, with equal propriety, be applied to those men. Webster, in defining this word, says, when applied to a man, it means a watchman or sentinel; and there is no doubt that the word guard and the word watch, when applied to a man, are synonymous terms; so that, whether those men employed as guards at the jail are technically termed guards or watchmen, it makes no difference for the purposes of this action, as in either case they would come within the meaning and scope of the resolution.

As we have said, there are several classes of persons are provided for by this resolution:

First, civil officers; second, temporary clerks; third, all other clerks; fourth, messengers; fifth, watchmen, enlisted men detailed as such, superintendent of meters, and lamplighters, under Commissioner of Public Buildings; eighth, photographer of Treasury Department; employees, male and female, who are not included in the foregoing list of persons, and who, at the date of the resolution, were employed in the Executive Mansion, or any of the departments proper, or any bureau or division thereof; or in the office of the Coast Survey, Naval Observatory, Navy Yard, Arsenal, Paymaster General, including the division of referred claims; Commissary General of Prisoners, Bureau of Refugees, Freedmen, and Abandoned Lands, Quartermasters, Capitol and Treasury Extension, City Post Office, and Commissioner of Public Buildings, whether their salary is fixed by law or not; provided that they do not receive more than three thousand five hundred dollars per annum.

All the claimants come within the provision of the resolution under which they claim, in a two-fold sense:

1st. They are employees in a bureau of the Interior Department, and therefore within the provision of that branch of the resolution providing for persons employed in that department. (See act of March 3, 1849, 9 Stat. at Large, p. 395.)

2d. They are employees in the office of the Commissioner of Public Buildings, (see finding of the court and authorities above cited,) and therefore within that branch of the act providing for those employed in that office.

L. S. POLAND,
J. DANIELS,
Att'ys for Appellees.

Supreme Court of the United States.

THE UNITED STATES
v.
GEO. H. MILLER.
No. 204.

APPEAL FROM COURT OF CLAIMS.

BRIEF OF APPELLEE.

The facts in the case appear on p. 3 of the Record, which cannot be changed or contradicted by letters introduced by the United States, in their brief, or other means.

QUESTION.

The question is one of construction of statute, rather than a controversy on facts.

Upon this we submit our view of the law.

There are several classes of Government servants provided for by the law: First, civil officers; second, temporary clerks; third, all other clerks; fourth, messengers; fifth, watchmen; sixth, enlisted men, detailed as such; seventh, superintendent of meters and lamp-lighters, under Commissioner of Public Buildings; eighth, photographer of Treasury Department; ninth, employés, male and female.

Without regard to any other question, let us inquire who are embraced in the foregoing.

First. The civil officer, as contradistinguished from the military or naval officer. This has reference to commissioned officers, or those who hold a warrant of office.

Second and third. The temporary and all other clerks, as embracing that small army of Government servants known as Government clerks.

Fourth. The messengers, who attend upon the various departments, officers, clerks, &c., and perform such duties as the name imports.

Fifth. The watchmen, whose grade of duty is a trifle lower, perhaps.

Sixth. The enlisted soldier, who happens to be detailed on watchman's or messenger's duty, or other civil service.

Seventh and eighth explain themselves.

Ninth. Employés, male and female—a comprehensive word, which includes all the foregoing and any other person employed, not there included. (2 Brockenbrough's Reports, p. 280, United States *v.* Bellew.)

But not all the persons employed by the Government at Washington City are given the benefits of the law.

Let us next inquire what are the limitations.

The first apparent limitation is to be found in the first clause of the act, which reads as follows:

"That there shall be allowed and paid, &c., to the following-described persons, now employed in the civil service of the United States at Washington, as follows: To civil officers," &c., &c.

What is meant by "employed in the civil service of the United States?" It means that the persons shall not be employed in the military service proper, nor in the navy service proper. We say *proper*, for the law specially provides for the payment of employés of the Navy and War Departments, and the various bureaus and divisions thereof; and this service is to be distinguished from military or navy duty proper.

It does not mean that the person serving shall necessarily be a civil officer, or employed by commission or appointment; for the act extends to the enlisted soldier who is detailed on civil service, *i. e.*, in a department, &c. Indeed, he may be, in fact, doing a certain kind of military duty at the War Department, as a watchman or messenger, and yet be entitled to the pay. For example, a lieutenant of the 12th infantry, detailed at same time with one of his enlisted men at the War Department for duty—the lieutenant in charge of a bureau, and the soldier as his messenger—one would get the pay and the other would not.

It means that any one of the "following-described persons," no matter who or what he is, provided he is employed in the service of the Government in a civil capacity, as contradistinguished from a military or naval capacity.

It will be observed the law would have been perfect in its

operation without the clause "employed in the civil service of the United States," except, possibly, that to exclude the army and navy they must have been mentioned.

The introduction of the word *civil* gives no special importance to the service, except to show that it must not be some other service; and what other government service is known but military and naval?

The word *civil* was not intended to carry with it any idea of exalted public functions to be performed, for the act says the *following-described persons* shall receive the pay, &c.

Run the eye over the list, and see how comprehensive it is. It reaches into every department, division, bureau, generally, and, not content here, specifies them. It then looks over these various departments, bureaus, divisions, &c., and seems to take a roster of all the persons employed in them, *excluding only army and navy officers*, but not excluding the detailed soldier. The roster names every one apparently employed in these various departments, &c.; and then, to cover any who may be omitted, the word employé is added.

Who is the employé of the navy yard, arsenal, Paymaster General, and all the other named bureaus and persons? Can you say he is the person who runs errands for an officer, one who watches the premises nights, builds fires in the office, and not also embrace others employed in other occupations in the same department?

Employé does not mean here messenger, because the law mentions him; nor watchmen, nor enlisted man, nor superintendent of meters, nor lamp-lighter, nor clerk, nor civil officer, for they, too, are named. It means simply what this court held in Stone's case, "one who is employed," and was intended to embrace all who might by possibility be omitted in the list named.

To return to the clause "following-described persons now employed in the civil service," &c.

We think the part of the clause commencing "now employed," &c., is a subordinate clause to the more definite one, "following-described persons," and that it is descriptive and declaratory of the status of the persons "following described."

The law is as though it read, who are now employed, &c. It, in fact, declares the persons named to be in the civil service for the purposes, and hence extends the benefits, of the law. We must not inquire beyond the law, for, where it is possible, it must be its own interpreter. If it names a class of persons as entitled to the benefits, they must not be deprived of them unless some plain and controlling clause takes

them away. The terms "employed in the civil service" will not effect this.

But in this phrase there is more meaning in the verb *employed* than the adjective *civil*. It is the employment in a certain kind of duty, rather than the mere holding an office of a certain character. The enlisted man proves this, for the character of his *relations* to the Government excludes him, but the character of his *employment* admits him. If it is a civil service, we are first to establish, and then prove all persons as belonging there, the civil establishment of this Government is a curious compound. For example, the law names the *lamp-lighters* of the city, *messengers, and watchmen, and enlisted soldiers, and employés, male and female*, &c. These cannot be construed as not embraced by the law. Yet, in common parlance, would you speak of them as a part of our civil establishment? The law only asks if they come under a certain description, and if their duty is of a civil character. Again, there is another distinction which must be observed The language "*employed in* the civil service," &c., does not mean *belonging to* the civil service. The difference is wide, and herein we think may be found the key to the misapprehension indulged by some as to the proper construction of the law. And here may be reconciled the apparent difficulty in arriving at the meaning of the act. We have no civil service, so called, in this country, *to which* certain persons are declared to belong; but we have civil duties, manifold and varied, *in which* thousands are employed.

Again, as the laws nowhere define the terms civil service, we must learn their meaning from other than a statutory definition, as this court was compelled to do in defining the word employé.

There being no civil service known to our system of government, we do not find the two words, taken together, defined by any writer or lexicographer.

The nearest definition to civil service we have found is in Story's Constitution, sections 791, 792. In discussing the meaning of civil, as applied to those officers triable by impeachment, he says: "All officers of the United States, therefore, who hold their appointments under the national Government, whether their duties are executive or judicial, in the highest or in the lowest department of the Government, with the exception of officers in the army and navy, are properly civil officers, within the meaning of the Constitution." We cannot see how this distinction can be made without the distinction between civil service and military and navy ser-

vice follows, as we have intimated. The same reasoning is involved in both cases, and one must be true if the other is.

Second. We come now to notice another limitation.

The resolution shall not apply to persons whose salaries, as fixed by law, exceed $3,500 per annum. It may be said that the phrase here, "salaries fixed by law," has some controlling influence. A little examination, however, will show that this relates to those who shall *not* receive the benefits of the law—not those who *shall* receive them. This clause, then, may be dismissed with the remark, simply, that it furnishes the bar to recovery of twenty per cent. in case of a salaried officer who receives to exceed $3,500; but it may be questioned whether, if there were a case where an employé of the Government, not receiving a salary fixed by law, but a compensation exceeding $3,500, could not recover twenty per cent. A strict construction of this limitation, we think, would thus result; but the question is not a practical one, for employés receiving pay not fixed by law in no instance receive so much as this.

Third. We next observe not a limitation so much as a measure of compensation; *i. e.*, the person named shall receive, &c., "an additional compensation of twenty per centum on their respective salaries, as fixed by law, or, where no salary is fixed by law, upon their pay, respectively, for one year," &c.; but when any of said persons is, or shall be, only entitled to receive salary or pay for a part of said year, the said twenty per centum shall be computed on the amount such person is so entitled to receive for said services in any or all said departments or offices," &c.

Webster defines the word civil, "pertaining to a city or State, or to a citizen in his relations to his fellow-citizens or the State;" and this is the nearest definition to our purpose which we can find in any of our dictionaries.

Of "service," Webster says: "The act of serving; the occupation of a servant; the performance of labor for the benefit of another, or at another's command." In the absence of a statutory definition, and any other in any sense technical or peculiar to any special class, we must resort to the common acceptation, and this narrows the question down to a very plain meaning.

The first thing noticeable here is the word compensation, indicating the purpose of the law to be to increase the gross earnings of all persons employed by Government, not as a gratuity or bounty, but as "additional compensation."

Second. The compensation is computed upon their re-

spective salaries as fixed by law, and where no salary is fixed by law upon their pay, respectively, for one year, &c.

Now, salary and pay are synonymous; both mean an equivalent for services performed. (See Webster.) The law means the same as though it read, "upon their respective pay as fixed by law, and, where no pay is fixed by law, upon their pay respectively for one year," &c. Evidently the computation was to be made first upon the pay as fixed by law; but as manifestly many employés of Government were working for pay not fixed by law directly, they too were included by the latter clause. But as employés, whose pay is fixed by the terms of the law, are generally spoken of as receiving a salary, these were meant by Congress in speaking of persons receiving salary while they were mentioned in contradistinction from the class named immediately after. The whole clause, with its punctuations, cannot be read naturally and freely without making it include, *first*, the persons whose salary or pay is fixed by law, *i. e.*, named in the law, as many are; and, *second*, persons whose pay or salary is not fixed by or named in the law, as many are not. No torture of language can make the limitation, "fixed by law," apply to both.

Third. But observe the clause which follows: "But when any of said persons is, or shall be, only entitled to receive salary or *pay* for a part of said year, the said twenty per centum shall be computed on the amount such person is so entitled to receive for *services* in any or all of said departments or offices," &c.

Here is the strongest evidence that Congress meant to seek out all who were being paid by the Government for *services* in the departments, and declare that they should receive this *additional compensation* or pay.

Indeed, at every stand-point from which you view the law, it is apparent that it originated in a broad and liberal feeling, and should be so construed.

Congress never meant to discriminate among the public servants at Washington further than to make the *salary* limit of $3,500, and the *service* limit, so to speak, of military or navy. If you receive $3,500, you shall not receive the twenty per centum; if you are a military or navy officer, you shall not receive the extra pay. In the eye of Congress the day laborer and the skilled clerk had the same rights. The man who did errands in the department, inspected marble on the Capitol, or molded cannon at the navy-yard, or made muskets at the arsenal, or looked after the Government

interests in the quartermaster or commissary departments were all upon the same footing. Who can say to this man, he is entitled, and not this one, because of the different character or quality of the service? Among the clerks themselves and bureau heads there is the widest difference. One clerk never performs an hour's work but as a copyist, another compares records, another adds figures, another files records, and so on, in an endless catalogue of duties requiring neither skill nor brains, and who compared, in qualities of mind, to some of the claimants before this court, deemed by some unfit to receive the benefits of this law, are not to be spoken of in the same day.

There is not a question pertaining to practical life, to literature, mechanics, fine arts, or, in short, anything that distinguishes a man among his fellows, which this court could not have more readily answered by Miller than hundreds in the departments whom we could select, that have received and squandered their additional compensation. It will not do to invite comparisons of this kind. The law is not to be thus construed. It was not intended to *equalize* the civil service, or *reform* it, or to do anything but give *additional compensation to certain described persons.* If the law is to be interpreted from its language, we cannot look beyond this, and, looking beyond, we find ourselves in a sea of trouble. The act adds nothing to the inequality of pay in our service so far as those described are concerned. It added twenty per cent. to all and left them relatively the same, and we cannot go to those not embraced in the law and institute comparisons.

It may be a matter of regret that twenty per centum was not added to the pay of all public servants, but the remedy is not to visit this regret upon those who were fortunate enough to get it.

The analysis we have imperfectly given is not intended as searching and exhaustive. The subject is susceptible of finer handling and more elaborate illustration. What we here give is unaided by books or resort to rules of construction.

CHIPMAN & HOSMER,
Attorneys for Claimants.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

THE UNITED STATES, *Appellants*, *vs.* GEORGE H. MILLER.	No. 204.
THE SAME *vs.* CHARLES H. MANNING.	No. 207.
THE SAME *vs.* THOMAS A. FITZPATRICK.	No. 208.
THE SAME *vs.* GEORGE W. HALL.	No. 209.
THE SAME *vs.* JOHN BOHN.	No. 210.
THE SAME *vs.* THOMAS E. LYTLE.	No. 211.
THE SAME *vs.* CHARLES F. HOLBROOK.	No. 212.
THE SAME *vs.* LORENZO D. LA RIEU.	No. 213.
THE SAME *vs.* JOHN G. RICHARDS.	No. 214.
THE SAME *vs.* WILLIAM N. NEWMAN.	No. 215.

Appeals from the Court of Claims.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

BRIEF FOR THE UNITED STATES.

THE UNITED STATES, *Appellants*,
vs.
GEORGE H. MILLER.
No. 204.

In his petition to the Court of Claims, this appellee alleged that he had been, since January 1, 1862, as clerk and employé in the office of the Capitol Extension, assigned to duty as foreman of construction, receiving a salary of $1,800 per annum, upon which sum he claimed an addition of twenty per cent. under the joint resolution of February 28, 1867, (14 Stats., 569,) which declares—

"That there shall be allowed and paid, out of any money in the Treasury not otherwise appropriated, to the following-described persons, now employed in the civil service of the United States, at Washington, as follows: To civil officers, temporary and all other clerks, messengers, and watchmen, including enlisted men detailed as such, to be computed upon the gross amount of the compensation received by them, and employés, male and female, in the Executive Mansion, and in any of the following-named departments, or any bureau or division thereof, to wit: State, Treasury, War, Navy,

Interior, Post Office, Attorney General, Agricultural, and including civil officers and temporary and all other clerks and employés, male and female, in the offices of the Coast Survey, Naval Observatory, Navy Yard, Arsenal, Paymaster General, including the division of referred claims, commissary general of prisoners, Bureau of Refugees, Freedmen and Abandoned Lands, Quartermaster's, Capitol and Treasury Extension, city post office, and Commissioner of Public Buildings, to the photographer and assistant photographer of the Treasury Department, to the superintendent of meters, and to lamplighters under the Commissioner of Public Buildings, an additional compensation of twenty per centum on their respective salaries as fixed by law, or, where no salary is fixed by law, upon their pay respectively, for one year from and after the thirtieth day of June, eighteen hundred and sixty-six; but when any of said persons is or shall be only entitled to receive salary or pay for a part of said year, the said twenty per centum shall be computed on the amount such person is so entitled to receive for services in any or all of said departments or offices within said year: *Provided*, That the above-named additional compensation to the employés of the Patent Office shall be paid out of the funds of said office: *Provided further*, That this resolution shall not apply to persons whose salaries as fixed by law exceed three thousand five hundred dollars per annum."

The agreed findings contradict this averment of the petitioner as to a matter within his own knowledge. They set forth that he was appointed foreman of carpenters March 1, 1866, at a salary of $1,800 per annum. This discrepancy admits of this, which is the correct explanation:

Previous to March 1, 1866, he was employed in the

same capacity as thereafterwards, but at a compensation of only five dollars per day of actual employment, that is, exclusive of Sundays, or about $1,500 per annum. The pay-roll for the month next preceding that in which his compensation was at the rate alleged in his petition, shows this fact. (Extract too elaborate to be printed.)

The action of the Secretary of the Interior on March 1, 1866, was not an appointment, but a mere increase of compensation, as the following copy of his letter will show:

(Copy.)

"DEPARTMENT OF THE INTERIOR,
"*Washington, D. C., March 2nd*, 1866.

"SIR: You are hereby authorized, from and after the 1st of the present month, to pay George Miller, time-keeper, &c., on the Capitol Extension, at the rate of one hundred and fifty dollars per month, for the time actually employed, until further orders.

"I am, sir, very respectfully, your obedient servant,
(Signed) "JAMES HARLAN,
Secretary."

"Dr. WM. S. MARSH,
"*Disbursing Agent, Capitol Extension.*"

Neither then nor at any previous time had he received an appointment from the Secretary of the Interior. Nor did he belong to the class of subordinates of the Architect of the Capitol, who are appointed by the head of that department. He was merely employed by the architect as other workmen are employed.

On July 2, 1864, an appropriation was made for the year ending June 30, 1865, as follows:

"For continuing the work on the Capitol extension, three hundred thousand dollars." (13 Stat., 350.)

April 7, 1866, a like appropriation was made for the year ending June 30, 1866, of $175,000. (14 Stat., 19.)

With this work of extension, the Interior Department became connected by virtue of a joint resolution of Congress of April 16, 1862, (12 Stat., 617,) which provided:

"That the supervision of the Capitol extension and the erection of the new dome, be, and the same is hereby, transferred from the War Department to the Department of the Interior."

Of the joint resolution under which this claim is made, the provisions pertinent to this argument are the following:

"That there shall be allowed and paid, * * * to the following described persons now employed *in the civil service* at Washington, as follows: To civil officers, temporary and all other clerks, messengers and watchmen, * * * and employés * * * * *in* any of the *following named Departments* or any bureau or division thereof, to wit: * * * Interior * * * and including * * * employés * * * *in the offices of the* * * * *Capitol* * * * *Extension*, * * * an additional compensation of twenty per centum," &c.

I. The first objection to be made to the allowance of this claim is that the claimant shows himself not to be employed in the "civil service," which is the prime requisite of the joint resolution under which he claims additional compensation. The power to make contracts

for personal as well as other service, to hire persons into the employment of the United States, is not expressly given or limited by the statutes, or even the Constitution of the United States. Says Chief Justice Marshall, (United States *vs.* Maurice, Brockenborough's Decisions, 110,) "The right to make contracts may flow from an act of Congress which does not, in terms, prescribe this duty: * * * there is a power to contract in every case where it is necessary to the execution of a public duty."

Whether such public duty is to be executed by officers known as such to the statutes, or by mere agents not known to the laws, who themselves have been employed by such officers, makes no difference in respect to the power to make contracts necessarily incident to the execution of the duty. The agent, equally as well as the officer, may make contracts, may employ persons; and this is true of every branch of the service, civil, military, and naval, and of all other employment, (if any,) which lies outside the limits of either of these branches of the regularly established service of the United States.

Here, indeed, lies the question under discussion: Is there any employment by the United States, neither military, nor naval, which is not a part of the civil service of the United States? Or is the term civil service, so broad as to comprehend every species of employment by or on behalf of the Government, other than naval or military?

Clearly, the term, "civil service," has not such great

breadth. In ordinary signification it can hardly be held to include all labor and work (not martial) done for the Government.

A person engaged in executing a contract to erect a public building is not in the civil service; nor are the workmen whom he employs thereon, as a contractor to furnish supplies to the army is not in the military service. Nor would the status of these workmen be altered, if, instead of being hired by a contractor who was not a Government officer, they were hired by such an officer.

Wherever this term, "civil service," is used in the statutes, it plainly appears to be used in a narrower sense than that which is now necessary to include the employment of this appellee. The acts laying internal taxes contain the term, using it in its more restricted sense. (See act of July 1, 1862, sections 86 and 91, 12 Stat., 472, 473, and subsequent similar statutes.) There a tax is imposed upon the pay of persons in the "civil, military, naval, or other employment or service" of the United States. Here the word "service" is treated as a word that, even unrestricted by a qualifying adjective, may be too narrow to include all persons who render personal service to the Government, and accordingly its meaning is supplemented by the more indefinite word "employment," while the terms "civil, military, and naval service" are supplemented likewise by the broader term "other service."

In one other place, beside the tax acts, is this expression used, and still in its narrower sense. An appropria-

tion act of March 3, 1871, in its ninth section, (16 Stat., 514,) authorizes the President to prescribe "such rules and regulations for the admission of persons into the civil service of the United States, as will best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of service into which he seeks to enter."

These provisions cannot be intended to apply to all persons hired into the employment of the Government, that is, to those who serve the United States merely by contract.

That this section does not so apply, appears in its closing language, which shows its reference merely to "persons who may receive appointments in the civil service."

Thus entry into the civil service is not by contract, but by appointment. In other words, the civil service consists merely of offices established by law, to be filled by appointment authorized by law, in accordance with the Constitution.

If it be urged, on the other side, that the joint resolution of February 28, 1867, includes persons as beneficiaries thereunder who did not belong to the "civil service" as thus construed, then the inference in favor of the appellee to be drawn from that fact is sufficiently answered by the statement that those persons are included in the resolution by special designation, as though the term "civil service" did not, of its own inherent

force, embrace their employments. This is certainly the fact with reference to the photographer and assistant photographer of the Treasury Department. The same may be said, also, of "the superintendent of metres" and of the "lamplighters under the Commissioner of Public Buildings," Government employés, who, as will hereafter in another case be shown, are not in the "civil service."

It hardly need be added that the special inclusion of these employés goes very far towards establishing the exclusion of all others whose employment would of itself give them no more right to the benefits of this resolution than those specially named.

II. The next objection to be made to the allowance of the claim made by this appellee is, that he has not shown himself to have been an employé "in the office of the Capitol Extension."

The agreed statement is merely that his service was "in connection with the Capitol Extension;" and the fact is, that there was a clerk appointed by the Secretary of the Interior, and removable by that Secretary alone, who was assigned to duty in the office of the Capitol Extension, who answers to the call of the joint resolution of February 28, 1867, for beneficiaries in that office. The duties of this clerk were purely clerical, pertaining distinctively to the proper work of an office. Thus both the method of his appointment, and the duty which he performed, brought that employé within the scope of the

joint resolution under discussion, because his appointment and service were both similar to those of the Executive Departments in Washington generally, to raise the compensation in which was the only originating purpose of the resolution.

III. This statement gives ground for another objection to the affirmance of the judgment of the court below in this case, namely, the appellee was not an employé in any of the Executive Departments in Washington. His was an employment unknown to the laws, instead of being established by statute. The distinction between employments specifically provided by law and those which merely arise as incidents to the execution of an appropriation act is now new. It was recognized by Attorney General Black, in giving a construction to statutes giving increased compensation like the one now under consideration—that of August 4, 1854, and of August 18, 1856. Opinions, vol. IX, p. 117, (see p. 122.) The phrase "all laborers in the employment of the Executive Departments" is there held applicable only "to those who are constantly and regularly engaged at plain manual labor, under the authority of laws which expressly authorize their employment and attach them to the several offices as the laborers thereof."

The employés in these departments were the intended beneficiaries of that resolution. It is, in its leading and general terms, limited to them, and wherever its benefit is extended beyond this class, the extension must be

shown either in express words, or at least in the most cogent grounds of reason. Neither can be shown in the present case. There are no words in the joint resolution of February 28, 1867, unequivocally including this appellee; and in neither his appointment, employment, nor his compensation, (newly rated March 1, 1866,) can be found any reason for bringing him within the scope of that resolution.

Accordingly this appeal ought to be sustained by a decision and order that the case be remanded for a reversal of the former decision and a dismissal of the petition.

THE UNITED STATES, *Appellants*,
vs.
CHARLES H. MANNING. } No. 207.

The appellee served as one of the guards of the jail of the District of Columbia for the fiscal year ending June 30, 1867, and was paid therefor from the Treasury of the United Statrs by the disbursing agent of the Interior Department a compensation of $1,200. Upon this pay for the year he now claims an additional sum of twenty per cent. under the joint resolution of February 28, 1867. (See transcript, p. 1.)

The legislation affecting the guards at the jail is shown in the following summary:

The pay of guards at the jail in the District of Co-

lumbia is not prescribed by law, nor mentioned in any statute.

By the act of 27th February, 1801, (2 Stat., 106,) the marshal of the District was intrusted with the custody of the jail, and made accountable for the safe-keeping of the prisoners.

The act of 29th February, 1864, created the office of warden of the jail, who, it declares, "shall have all the power and discharge all the duties heretofore legally exercised and discharged over said jails and the prisoners therein by the marshal of the said District." (13 Stat., 12.)

Under the above provisions of law the guards were appointed by the marshal or warden, but their number and the amount of compensation paid to each were subject to the approval of the head of Department who exercised control over the judiciary fund out of which they were paid.

Supervisory power over the accounts of marshals was given to the Secretary of the Interior by the act of 3d March, 1849, (9 Stat., 395,) and to him the warden was required to report annually. (Act of 29th February, 1864.)

The pay of the guards in the year ending 30th June, 1867, was as fixed by the Secretary of the Interior in a letter dated 12th June, 1863, to Ward H. Lamon, United States marshal.

Counsel for appellants maintain that the appellee is not entitled to this additional compensation because his

service is not within its terms. He was not, during the year mentioned, employed in the civil service of the United States, at Washington, in any one of the Executive Departments, or in any bureau or division thereof, or in any office named in the joint resolution.

Neither his employment nor compensation is directly known to any law. His appointment is not authorized by statute, nor his compensation provided for by any appropriation. None of the appropriation acts recognize his services at all, and therefore they cannot recognize his employment as being in the civil service in the Interior Department. He was not appointed by the Secretary thereof, but by the warden of the jail. He was paid by the disbursing clerk of that Department, not out of the appropriation for that Department, as the clerks and employés proper of that Department are paid, but out of what is known as the judiciary fund, his compensation being an item of the expenses "for the safekeeping of prisoners," wherever kept, throughout the United States. (13 Stat., 199.)

Aside from the actual fact that this claimant was paid from this fund, it is enough to suggest that, in the eye of the law, he might have been so paid by the disbursing clerk of the Interior Department, as by law that Department controlled at that time the disbursement of the judiciary fund. Thus the finding merely that he was paid by that officer carries no inference whatever that, in any proper sense, he belonged to the Interior Department, where his claim must rest, if it have any validity.

Performing a part of the duty provided for by this appropriation, it appears that the location of his service at Washington was accidental, and not necessary. It was here, not because the seat of Government, with its several executive departments, was here, but merely because the jail of the District of Columbia was here. His service had no more connection with the capital of the United States than had that of the assistant assessors of internal revenue who happened to be located in this city, whose claims to additional compensation, under the joint resolution of February, 1867, the Court of Claims promptly rejected because they were merely local officers.

Applying the same principle of construction, a late Attorney General (Mr. Evarts) advised the President that the depot commissary at Washington was not a bureau or division of the War Department within the meaning of the joint resolution now under consideration. (See O. A. G., XII, 553.)

He says: "When we speak of a bureau or division of any of the executive departments, we usually mean a branch of the public service charged with some portion of the administrative duties of that department, under the immediate supervision of its chief. This is the ordinary import of those terms, and is, I think, the sense in which they should be applied, as used in the law. Thus considered, the depot commissary at Washington is no more a branch of the War Department than the depot commissary at New Orleans or at any other remote point.

"The distinction is very well marked in the annual appropriation acts. The compensation of the officers, clerks, messengers, etc., employed in the War Department, and in the different offices and bureaus thereof, is separately provided for out of the appropriation annually made for the legislative, executive, and judicial expenses of the Government, whilst the pay of clerks and employés of the commissaries, quartermasters, paymasters, and of other divisions of the military service, is commonly provided for out of the appropriation annually made for the support of the Army."

THE UNITED STATES, *Appellants*,
vs.
THOMAS A. FITZPATRICK. } No. 208.

Upon an annual compensation of $1,000 for the year ending June 30, 1867, received by this appellee as "keeper of the western gate, Capitol square," he claims an addition of twenty per cent. under the joint resolution of February, 1867, in his alleged capacity as "an employé in the office of the Commissioner of Public Buildings."

To this employment was attached, as early as the year 1861, a compensation of $876 per annum; and from this rate this compensation was raised by the third section of the act of June 25, 1864, (13 Stat., 160,) twenty per cent., with a restriction which kept it from exceeding $1,000. This increase, at first made to end

with June 30, 1866, was, on June 23, of the latter year, continued in force. (14 Stat., 207. See, also, first line on page 206.)

To the allowance now claimed, the objection is that, in contemplation of law, the appellee was not what he alleges himself to have been, namely, "an employé in the office of the Commissioner of Public Buildings."

This is a conclusion not of fact, but of law, and therefore any finding of the court below upon this point is not of conclusive effect in this hearing upon appeal. That the appellee was "the keeper of the western gate," may be deemed a fact properly established by the finding of the Court of Claims. But whether such keeper is an employé in the office of the Commissioner of Public Buildings, depends, (as will be shown,) upon whether the statutes recognize him as such, or *as otherwise.*

Counsel for appellant maintain that the statutes plainly recognize such keeper as otherwise than an employé in that office.

I. The acts of June 25, 1864, and July 23, 1866, already alluded to, by virtue of which his compensation was raised to $1,000, did not know him as "in the office of the Commissioner of Public Buildings." The expression "in the office of" (that Commissioner) is not to be found either in the section which commenced, or in that which continued that increase upon which he now claims an additional increase. If, as he now contends, the true legal designation of his place of employment

for the year in question were "in the office of" (that Commissioner,) then his compensation would not have been increased for that year, by the seventh section of the act of July 23, 1866, and he would be here now (if at all) claiming merely an advance upon his salary of $876 per annum, as irrespective of the two enactments of increase referred to.

The fact is, he received the benefit of those enactments as a watchman "employed under the Commissioner of Public Buildings." Properly so, also, as a further examination of the statutes will show that to be his only true designation.

II. The location "in the office of" (that Commissioner) is known to the statutes in connection with other employés exclusively, to wit, with one clerk and one messenger, (See general appropriation act of July 23, 1866, 14 Stat., 198. See also similar expression in similar earlier acts, to be found as follows: 13 Stat., 451, 151; 12 Stat., 688, 361, 139; 11 Stat., 415, 301, 211, 109; 10 Stat., 651, 552, 206, 91.)

On the other hand, the employment now in question and other similar employments, are never named in the appropriation acts as in that office, but always in another connection. On the page last above cited, (a part of an early act, August 31, 1852,) it is true that certain of these employments are provided for in the same act, and nearly in juxtaposition with the provision for those in the office of the Commissioner of Public Buildings.

But even there this designation of location is not bestowed upon them. In the act of August 4, 1854, (10 Stat., 568,) these employments are carried to another part and heading, namely, "Public Buildings and Grounds;" as also in that of March 3, 1855, (10 Stat., 662,) and in subsequent acts, also, they are kept distinct. (11 Stat., pp. 116, 117, 219, 308, 421; 12 Stat., pp. 143, 144, 366, 694; 13 Stat., 158, 459; 14 Stat., 205, 206.)

The same distinction is maintained in later legislation. (15 Stat., 96.)

Furthermore, the description, "under that Commissioner," is used in the joint resolution as applied to a special class of employés (lamplighters) under that officer—a class whose compensation had not been increased by any other enactment, and who, therefore, were entitled to the increase provided for in that resolution.

The express use of the designation, "lamplighters under," shows that those employés were not included in the previous general description, "employés in the office of the Commissioner of Public Buildings." If the lamplighters were not included, why should any other employés *under* that officer be included by the term "*in* his office?" Why should those be included whom the appropriation acts have never named as "in his office," and whom the laws have mentioned, and whose compensation has been increased as *under him?*

Thus in this, and the same is true in the six following

cases, the defence rests upon the proposition that the employment of the appellees is known to the statutes of the United States as "under the Commissioner of Public Buildings;" and that this being their proper designation, the joint resolution of February 28, 1867, has made no provision for an increase of their compensation.

How fully their compensation had been provided for under other enactments will be shown in each other case, as has already been done in this.

This argument, founded on the phraseology of the several relative statutes, is accordant with what appears from the face of the joint resolution of 1867, and is otherwise known to have been the ruling purpose of Congress in passing that enactment, namely, to increase those rates of compensation only which had remained fixed for some years. It cannot have been within the scope of Congress in this piece of legislation to have provided additional increments for those whose salaries had already been increased within the previous year. If any such are to receive benefit from this joint resolution, it must be because the language will absolutely compel a construction which will include them within its terms. They can claim no advantage from general intent and purport.

THE UNITED STATES, *Appellants*,
vs
GEORGE W. HALL. } No. 209.

This appellee alleged in his petition that he was duly appointed superintendent of the crypt "by the Commissioner of Public Buildings in comformity with law; that his salary, as fixed by law, was eleven hundred and forty dollars per annum, and that the same was regularly paid to him by" said Commissioner. (Petition, first paragraph.)

Upon three-fourths of this annual salary, his service being from July 1, 1866, to April 1, 1867, he claims an additional compensation of twenty per cent., or $171, under the joint resolution of February 28, 1867.

The Court of Claims have found that he was, for the above time, an employé in the office of the Commissioner of Public Buildings, in that part of the Capitol called the crypt, at a salary of $960 per year. They do not find that he was what he alleges himself to have been, "superintendent of the crypt;" and the Commissioner of Public Buildings, testifying as a witness for the claimant, described him as "watchman in crypt," and by no other designation; and in no statute is he designated as "in the office of" the Commissioner of Public Buildings.

A report of the First Comptroller substantiates the finding of the court that Hall's *salary* was $960, and substantially coincides with the allegation in the petition that he received at the rate of $1,140. The report shows

that upon his salary, at the rate of $960, he received an addition of twenty per cent., making it $1,152, which the appellee erroneously alleges as $1,140. This salary of $1,152 was the final result of two increments of 20 per cent. as per acts June 25, 1864, sec. 3, (13 Stat., 160;) July 23, 1866, sec. 7, (14 Stat., 207;) July 28, 1866, sec. 18, (14 Stat., 323,) on a salary of eight hundred dollars, as first prescribed by the rules and regulations of the presiding officers of both Houses of Congress, authorized by the act May 2, 1828, (4 Stat., 266.)

From this statement it is obvious that the record on its face proves the appellee to have received the twenty per cent. he now claims.

THE UNITED STATES, *Appellants*,
vs.
JOHN BOHN. } No. 210.

John Bohn, in his petition to the Court of Claims, alleged that he was for the year ending June 30, 1867, employed on the public grounds in the city of Washington, * * * appointed in conformity with law by the Commissioner of Public Buildings, *by which appointment he became an employé in the office of the said Commissioner.*" His pay he alleged at $626 per year, upon which sum he claimed an addition of twenty per centum, or $125 20.

The Court of Claims found his pay to have been $864 per year, and gave him judgment for twenty per centum

thereon; that is for $172 80, although the petitioner claimed but $125 20.

Under what provisions of law was his compensation (if in fact it was) carried up to the sum of $864 for the year ending June 30, 1867? An answer to this question may unfold grounds upon which this appeal must be sustained.

He entered upon his labor July 1, 1866, with a compensation, as known to the law, of $600 per annum. (See the appropriation of July 23, 1866, for the current fiscal year, 14 Stat., 205.)

But by the seventh section of that act (p. 207) the compensation of "laborers *under* the Commissioner of Public Buildings" was increased twenty per centum; and by virtue of this designation, this appellee received a compensation of $720, (very properly allowed, it may be admitted in this argument.)

Further, the eighteenth section of the act of July 28, (same year, same volume, p. 323,) having provided an increase of twenty per centum to the compensation of the "employés of the Senate and House of Representatives," this claimant received *as such employé* a second twenty per centum, (improperly, the counsel for Government maintain, though this is of importance only as it bears upon the argument of the question now before the court.)

Thus having received a compensation already increased by 44 per centum, above that with which he entered upon his employment at the commencement of the year

in question, he now demands a third increase of twenty per centum upon 144 per centum of his original compensation, so that this original compensation may be increased to 172 per centum of itself.

This third increase (of 28 per centum) he claims by virtue of a third designation as an "employé in the office of the Commissioner of Public Buildings."

This statement brings this claim within the scope of the argument made in No. 208, (the case of Thomas A. Fitzpatrick,) to the effect, that the appellee's employment is not known to the statutes as being "in the office of the Commissioner of Public Buildings."

THE UNITED STATES, *Appellants*,
vs.
THOMAS E. LYTLE. } No. 211.

In this case the appellee, in his petition to the Court of Claims, alleged himself to have served as a watchman on the Capitol grounds in Washington, duly appointed by the Commissioner of Public Buildings from June 30, 1866, to June 30, 1867, at a salary of $925 per annum; and upon this salary he claimed an addition of twenty per cent., or $185, under the joint resolution of February 28, 1867.

The Court of Claims have found that he was an employé in the office of the Commissioner of Public Buildings as watchman in the east grounds of the Capitol, at a salary of $864, until April 1, 1867, and $1,000 there-

afterwards. That office was abolished March 2, 1867. (15 Stats. Large, 466.)

This salary of $864 is made up by adding twenty per cent. twice to a salary of $600, this appellee receiving the benefit of those additions under the same statutes, and by the same designations as have been fully stated in the case of John Bohn, namely, as "under the Commissioner of Public Buildings," and as "an employé of the Senate or House of Representatives." (Act of July 23, 1866, sec. 1, 14 Stat., 206; sec. 7, *ib.*, 207; act July 28, 1866, sec. 18, 14 Stat., 323.)

This statement dispenses with the necessity of any further argument in addition to what has already been made in case No. 208.

THE UNITED STATES, *Appellants*,
vs.
CHARLES F. HOLBROOK. } No. 212.

This appellee, in his petition to the court below, alleged himself to have been from June 30, 1866, to June 30, 1867, employed under due appointment by the Commissioner of Public Buildings as a watchman in the Capitol grounds, at a salary regularly fixed by law for that year, and regularly paid to him, at $1,150, upon which sum he claims an addition of twenty per cent. under the joint resolution of February 27, 1867.

The Court of Claims have found that he was, for the time above, a watchman at stables, at a salary of $1,000 a year.

Prior to June 25, 1864, the salary by law attached to this employment was $600. (See appropriations of February 25, 1863, 12 Stat., 694.) On the latter date twenty per centum (appropriation act, sec. 3, 13 Stat., 160) was added to the compensation of watchman "under the Commissioner of Public Buildings," with a proviso against increasing any salary "so as to exceed ten hundred dollars;" and to this limit the appropriation (14 Stat., 321 and 456) recognized this salary as raised. This increase being enacted to terminate June 30, 1866, it was, on June 23, of the last-named year, extended by the seventh section of the appropriation act for the following year. (14 Stat., 207.)

Thus known to the law, and his compensation provided for as "*a watchman under the Commissioner of Public Buildings*," he is not within any of the descriptive terms used in the joint resolution of February 28, 1867.

THE UNITED STATES, *Appellants*,
vs.
LORENZO D. LA RIEU. } No. 213.

The appellee was watchman employed in the Smithsonian grounds from July 28, 1866, to June 30, 1867, at a salary, as the Court of Claims finds, of $1,080 per year, upon which salary he in this action is seeking to recover an addition of twenty per cent., under the joint resolution of February 28, 1867, in his alleged capacity of "an employé in the office of the Commissioner of Public Buildings."

To show that he is not entitled to this increase—that the law does not know him as *in that* office, it is only necessary to refer to the statutes under which he has claimed and received the various portions of his salary of $1,080 yer year.

On December 20, 1866, an act was approved to supply deficiencies for the then current year, (14 Stat., 374,) containing the following appropriation, namely:

"To enable the Commissioner of Public Buildings to pay to three watchmen employed in the Smithsonian grounds for the fiscal year ending June thirty, eighteen hundred and sixty-seven, the sum of twenty-four hundred and seventy-five dollars is hereby appropriated."

This provision for a mere employment for a limited time with a specified compensation would (if that matter were now in question) naturally be held to be exclusive legislation upon this subject, certainly exclusive of earlier enactments which related to offices or employments existing at the time of their enactment.

Not so, however, considered this claimant; and he seems to have succeeded in persuading the accounting officers of the Treasury to act upon his own liberal notions towards Government employés.

A previous enactment (July 28, 1866, sec. 5, 14 Stat., 321) had provided—

"That each watchman * * * *under the Commissioner* of Public Buildings * * * shall, from the first day of July, 1866, receive a compensation of $900 per annum;" and under this provision the appellee's compensation was carried up to $900.

A still earlier enactment (July 23, 1866, sec. 7, 14 Stat., 207) had continued in force an addition of twenty per centum to the compensation of watchman *under the Commissioner* of Public Buildings, made June 25, 1864, (sec. 3, 13 Stat., 160;) and under this enactment this appellee received twenty per cent. on the salary of $900 just stated, thus carrying his compensation for the year named in the provision of December 20, 1866, from $825, as there fixed, to $1,080, as found by the court below. Although the act of June 25, 1864, under which he obtained his second increment allowed, provided that no salary be increased "so as to exceed the sum of ten hundred dollars."

Thus it appears that the employment of this appellee is not known to the laws of the United States as being "in the office of the Commissioner of Public Buildings."

THE UNITED STATES. *Appellants*,
vs.
JOHN G. RICHARDS. } No. 214.

The appellee in this case was a "watchman for the dome of the Capitol." By the act of June 25, 1864, continued by that of July 23, 1866, (13 Stat, 160, 14 Stat., 207,) his pay was increased from $600 to $720; and upon this sum he appears, under the act of July 28, 1866, sec. 18, (14 Stat., 323,) to have received an addition of twenty per cent., (being the second for that

year,) carrying his compensation to $864 per annum, for his service to April 1, 1867; and thereafter for the rest of the year, to have received under the act of July 28, 1866, (sec. 5, 14 Stat., 321,) a salary of $900, which was increased under sec. 3 of the act of July 23, (13 Stat., 160,) with its restrictive proviso, to $1,000.

Having had the benefit of these several increments, by virtue of the designation well known to the laws, of a "watchman under the Commissioner of Public Buildings," he cannot now claim that his proper designation is that of an employé "in the office" of that Commissioner.

THE UNITED STATES, *Appellants*,
vs.
WILLIAM N. NEWMAN. } No. 215.

The appellee served as captain of the Capitol police from June 30, 1866, till April 1, 1867, when he was discharged.

Upon the salary which he received by virtue of the provisions of previous enactments, he claimed an additional compensation of twenty per cent. under the joint resolution of February 28, 1867. (14 Stat. L., 569.)

See transcript, page 1.

This claim is made, and by the court below allowed, on the ground that the appellee was, during the time covered by this claim, an "employé in the office of the Commissioner of Public Buildings."

This the record shows to be a conclusion of law, which the court below rest upon the fact, properly found, that he was captain of the Capitol police.

Counsel for appellants deny the correctness of this conclusion. The Capitol police, it is contended, are not known to the statutes as employés in that office, but mainly by their own specific designation; and, whenever classified, then they are grouped where they belong, with the employés of Congress.

The only piece of legislation giving color to the claim that the Capitol police are employés in the office of the Commissioner of Public Buildings, is to be found in their mention in the act of May 2, 1828, (4 Stat., 266,) as the necessary assistants of that Commissioner; while the chief purpose of that legislation was to authorize a reasonable compensation for their services, to be allowed by *the presiding officers of the two Houses of Congress*, and to be paid in moieties from *the contingent funds of those Houses.*

From moneys appropriated for the use of these two Houses they still continued to be paid when this claim arose. (See appropriation act of July 23, 1866, 14 Stat., 192.)

That the Capitol police are employés of Congress appears in the action by virtue of which this appellee became entitled to the compensation which his case shows him to have actually received.

His salary of $2,088 was fixed by the following steps of legislation:

By an act approved April 22, 1854, (10 Stat., 276,) twenty per cent. being added to the previous compensation of the captain of the Capitol police, as fixed under the act of May 2, 1828, the pay of that officer became $1,740 per annum.

Subsequently, the presiding officers of the two Houses of Congress deemed it within their discretion (as it had been before the passage of that act) to fix the compensation of the Capitol police, and they reduced it by the amount of increase allowed by the act of 1854. (10 Stat., 276, 594.) This was sometime previous to the entrance into office of the present First Comptroller of the Treasury, Hon. R. W. Tayler, who early gave his opinion that this discretionary power no longer remained in those presiding officers to fix the compensation of the Capitol police, the same being determined by the act aforesaid; and in accordance with that opinion, Congress (March 3, 1863, 12 Stat., 748) made an appropriation for payment of what had been withheld from them. (June 25, 1864, 13 Stat., 159.) Thus restored to this sum, $1,740, the compensation of the captain of the Capitol police remained as fixed in 1854, (see appropriation of June 25, 1864, 13 Stat., pp. 146, 147,) until July 28, 1866.

By the eighteenth section of an act making appropriations for sundry civil expenses, approved on that day, the then present pay of the Capitol police was increased twenty per cent., the increase commencing with March 3, 1865. (14 Stat., 442; 15 Stat., 94.)

This increase of pay was given to the Capitol police and their officers as among the employés of Congress. (See the terms of the section which gave it, 14 Stat., 323.)

Nor was the term under which this appellee now claims benefit, namely, "in the office of the Commissioner of Public Buildings," unknown to the statutes of the United States. From the year 1852, downwards, the appropriation acts have made provision for empolyés *in that* office; that is, for "a clerk," or "a clerk and messenger." (10 Stat., 91, and other references given in the case of Fitzpatrick, No. 208.)

It is further to be noticed, that these appropriation acts recognize this clerk and messenger, not only as in that Commissioner's office, but as therein within the Interior Department.

No such recognition, however, can be found with reference to the Capitol police. They are treated, on the other hand, as belonging to Congress.

It is here worthy of notice that the statutes recognize the functions of the Commissioner of Public Buildings as not wholly within the Interior Department. (See sec. 4, act of May 2, 1828, 4 Stat., 266; and sec. 9, act of March 3, 1849, 9 Stat., 396.)

Furthermore, the statutes use different terms by which to designate two classes of the subordinates of that Commissioner, as properly belonging to the Interior Department or otherwise. Those not belonging to that Department are known in the statutes, not as *in his* office,

but as *under him.* The act of 1854 (13 Stat., 160) makes this distinction by providing for persons "employed *in the several departments* and *under* the Commissioner of Public Buildings," as those under the Commissioner were not in any one of the several departments.

"Under the Commissioner," not "in his office," is the expression here used, when a certain class of employés was to be reached. And both these expressions are to be found in the joint resolution (February 28, 1867, transcript, p. 1) now before this court for construction. This resolution provides increased compensation for persons "in the office of," and for persons "under the Commissioner of Public Buildings." The latter are "the lamplighters."

The special provision made for this class by name constitutes an important fact in the construction of the terms of that resolution with reference to the cases now before this court. In considering their status, the true clue may be found to the interpretation of the twenty per cent. resolution of 1867. *These* lamplighters were not employés of Congress in any sense. They are neither mentioned nor provided for in any appropriation for legislative purposes. Their duties were not about the Capitol or Capitol grounds. They lighted a portion of the lamps about the city—those lamps which the United States maintained. (See acts of March 3, 1857, 11 Stat., 225; February 2, 1859, 11 Stat., 378.)

Hence they received no benefit from the enactment of

July 28, 1866; and, *therefore*, they *by special designation* were mentioned in the legislation of February 28, 1867. Of all the employés *under* the Commissioner of Public Buildings, they alone are thus mentioned; and of all such employés *they alone* were not included in the enactment of July 28, 1866.

Here appears a distinction known to the law between the expression "in the office of the Commissioner of Public Buildings" and the kindred expression "under the Commissioner of Public Buildings." The first section of this act (see middle of p. 151) had made an appropriation "for compensation of the Commissioner of Public Buildings and the clerk and messenger *in his office*" as included in the "Department of the Interior;" and this messenger was provided for in this third section under the designation of "messengers * * * employed in the several departments."

But there were watchmen and laborers employed under that Commissioner, who were not employed in any of the several Departments. (See "Public Buildings and Grounds," on p. 158, and the specifications following that sub-heading.) For the benefit of *these watchmen and laborers* it was necessary to add to the description, "in the several departments," the other description, "under the Commissioner of Public Buildings." (July 25, 1866, 14 Stat., 365.)

But, with reference to the Capitol police, it is maintained that the statutes apply to them neither of these descriptions of connection with the Commissioner of Public Buildings. They are nowhere recognized as be-

ing employed *in his office* or *under him.* The act of 1854, which uses both these terms, goes further, and provides specifically for the Capitol police by name, as though neither term, of its own inherent force, included them; and in this respect the act of July 28, 1866, (14 Stat., 323,) follows its example.

On the other hand, the joint resolution of February 28, 1867, under which this claim is made, does not mention them by name. It cannot include them by the term "in the office of," for, as has already been shown, nor by the term "under the Commissioner," for a like and also an additional reason, namely, that this last-named term is, in its use, restricted to a single species of employés, namely, "lamplighters," by which all others are of course excluded.

In conclusion, it simply remains to suggest that this argument, drawn from the phraseology of the statutes, is accordant with the obvious intent of Congress in its legislation in the years 1866 and 1867 upon this matter of increased compensation. Having increased the compensation of the Capitol police, in 1866, by twenty per cent., along with that of other employés of Congress, it could not be presumed that these employés were intended to be included within the benefits of the legislation of 1867, whose main purpose was to increase compensation in the several Executive Departments. There is no good reason for unusual liberality of construction in their favor, and clearly they do not bring themselves within the terms of the enactment under which they claim.

GEO. H. WILLIAMS,
Attorney General.
B. H. BRISTOW,
Solicitor General.